IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.W.P. No. 16085 of 2006
Date of decision: November 07, 2006

Mewa Singh and Ors. .....*Petitioners*

Versus

The Divisional Canal Officer and Ors. .....*Respondents*

CORAM: HON'BLE MRS. JUSTICE NIRMAL YADAV
HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA

Present: Mr. Ashok Verma, Advocate
for the petitioners

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NIRMAL YADAV, J

The challenge in the present writ petition is with regard to transfer of area from outlet RD 22250- Tail of old chuli minor to outlet RD 18150-R of new chuli minor.

It is pleaded that vide order dated 06.09.2001 (Annexure P-1), passed by the Divisional Canal Officer, the petitioners area was wrongly transferred from outlet RD 22250-Tail of old chuli minor to outlet RD 18150-R of new chuli minor, which is not conducive for the better irrigation to the fields of the petitioners as the water level of this outlet is 3 feet lower than RD 22250-Tail of old chuli minor. It is further pleaded that no notice with regard to proceedings before the Divisional Canal Officer regarding transfer of aforementioned area of the petitioners, was ever given to them. The petitioners were, therefore, deprived of the opportunity to explain, that the existing source was the best source of irrigation for their area and the

transfer of their area to the new outlet, would not be in the interest of better irrigation.

The petitioners challenged the order (Annexure P-1) before the Superintending Canal Officer, who rejected the appeal, vide order dated 04.09.2003 (Annexure P-2). Thereafter, they filed an appeal before the Chief Canal Officer against the said order, which was also dismissed, vide order dated 12.07.2004 (Annexure P-3). Both the Appellate authorities have held that taking into consideration the comparative command statement, F.S.L. from both the outlets, it is revealed that the petitioners area would get better irrigation from RD 18150-R of new chuli minor. The petitioners area is comparatively located nearer to RD 8150-R of new chuli minor and, therefore, there is no justification for transfer of the petitioners' area to outlet RD 22250 -Tail of old chuli minor.

The main argument of the learned counsel for the petitioners is that no notice before passing order (Annexure P-1) was given to the petitioners, therefore, they could not explain that the existing sources i.e. outlet RD 22250-Tail of old chuli minor, was the best source of irrigation. It is argued that the cultivator is the best judge to choose the source of his irrigation and the area of the cultivator cannot be transferred from the existing source to an other source against his will.

On a careful consideration of the arguments, facts and the record, it is evident that no prejudice has been caused to the petitioners by transferring their area from outlet RD 22250- Tail of old chuli minor to outlet RD 18150-R of new chuli minor. The competent authorities have considered the site plan and the location of the land as well as the source of

irrigation, the petitioners land is comparatively located nearer to outlet RD 18150-R of new chuli minor, and is getting better irrigation than the earlier source of irrigation. The new chuli minor, has been constructed at the site on the demand of the land owners and in the interest of better irrigation. There is nothing on record to show that the petitioners' area is 3 feet lower than out let RD 22250-Tail of old chuli minor or on account of this, the flow of the water towards the fields of the petitioners is, in any way, being interrupted. Accordingly, we do not find any infirmity in the well reasoned orders passed by the Canal authorities.

In view of the above, the present writ petition is dismissed.

(NIRMAL YADAV)
JUDGE

(ASHUTOSH MOHUNTA)
JUDGE

07.11.2006
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